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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT: Wyatt EXAMINER: Dixon
SERIAL NO.: 09/544,508 GROUP ART UNIT: 3629
FILING DATE: April 6, 2000 ATTY. DOCKET NO.: MCO-P-00-001
INVENTION: "A METHOD AND SYSTEM FOR PROVIDING BED
AVAILABILITY INFORMATION ON A COMPUTER NETWORK"

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S APPEAL BRIEF TRANSMITTAL LETTER

MADAM:

Appellant submits herewith, in triplicate, Appellant's Appeal Brief in support of the Notice of Appeal filed September 14, 2004. Appellant encloses a check for \$170.00 for submission of this Appeal Brief. Appellant authorizes the Patent Office to charge any fees that may be due and owing or to credit any overpayment to Deposit Account No. 50-0595. A duplicate copy of this sheet is enclosed for this purpose.

Additionally, Applicant requests a refund of the \$170.00 fee for filing of this Appeal Brief. More specifically, Applicant respectfully submits that this Appeal Brief is being submitted as a result of the Patent Office re-opening prosecution after Applicant filed an Appeal Brief and previously paid the Appeal Brief fee; therefore, Applicant is entitled to a refund of this fee as well as the fee for filing the previous Appeal Brief.

Applicant authorizes the Patent Office to credit Applicant's deposit account to refund these previously paid fees.



Respectfully submitted,

(Reg. No. 35,018)

Brian M. Mattson
Patents+TMS
A Professional Corporation
1914 North Milwaukee Avenue
Chicago, IL 60647
Tel: 773/772-6009

CERTIFICATE OF MAILING

I hereby certify that this **APPEAL BRIEF with APPENDIX CONTAINING CLAIMS 1-10 and 14-19, SUPPLEMENTAL APPENDIX CONTAINING EXHIBITS A, B, C and D and check for \$170.00** are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, Alexandria, VA 22313 on October 18, 2004.

Brian M. Mattson (Reg. No. 35,018)



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APPELLANT'S APPEAL BRIEF

SIR:

This Appeal Brief is submitted in support of the Notice of Appeal filed on September 14, 2004. The Appeal was taken from the Final Rejection dated August 3, 2004.

I. REAL PARTY IN INTEREST

Medical Central Online is the real party in interest as the assignee of this application.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to Appellant or Appellant's legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-10 and 14-19 are pending in this patent application. A copy of the claims is appended hereto as the Appendix. Claims 1-10 and 14-19 were finally rejected by the Examiner in a Final Rejection dated August 3, 2004 and are hereby on appeal. The Final Rejection is appended hereto as Exhibit A of the Supplemental Appendix.

IV. STATUS OF AMENDMENTS

All amendments have been entered in this patent application. No amendments to the claims were made after the Final Rejection.

V. SUMMARY OF INVENTION

The present invention generally relates to a method and a system for providing bed availability information on, for example, a computer network. Further, the present invention relates to a method and a system for providing bed availability information on a computer network where a medical facility, such as, for example, a medical, health, extended care or geriatric care facility, may input information into a database regarding bed availability information of the particular facility. Moreover, an individual requiring bed availability information may access the database and search the database for the bed availability information. (Page 1, lines 6-18)

A computer network 1 may be a computer network which may interconnect a plurality of computers 10-16. The computer network 1 may include a server computer 18 having a database 20 attached thereto. Further, the computer network 1 may be, for example, the internet wherein a plurality of remote computers are connected via a telephone network or other like network to each other. In addition, the computer network 10 may be an intranet wherein the plurality of computers 10-16 are connected via a network internal to an organization, such as a business and/or an institution. (Page 7, lines 5-25)

The database 20 may contain information input into the database relating to bed availability information of healthcare providers. Any healthcare facility having bed availability information may use any of the computers 10-16 connected via the computer network 1 to access the database 20. The healthcare facility may then enter the bed availability information into the database 20. A user of the database 20 desiring information concerning the availability of beds in a plurality of healthcare facilities could use any of the computers 10-16 to access the database 20 and to extract the information concerning the availability of the beds of any of the healthcare facilities stored therein. The network 1, therefore, allows for real time updates and access to those updates regarding bed availability

as a patient is checked in and subsequently checked out of the facility. (Page 7, lines 26-33 and page 8, lines 1-12)

Further, any of the computers 10-16 may be a wireless system whereby the computer network may be accessed from a remote location. For example, any of the computers 10-16 may be a Palm Pilot™ by 3Com, Inc. that may access the internet wirelessly. Further, any of the computers 10-16 may be a wireless telephone having access to the internet. (Page 8, lines 13-19)

The system 50 may include a healthcare facility 52 which may provide information 54 to the database 20 for a plurality of users 58 to download. The information 54 may include healthcare facility information 60, a quantity of beds 62 in the healthcare facility 52, types of beds 64 in the healthcare facility 52, a bed availability projection 66 in the healthcare facility 52 and whether a wait-list 68 is in effect in the healthcare facility 52. (Page 8, line 33 and page 9, lines 1-7)

The users 58 may have access to the database 20 and may retrieve the information 54 from the database 20. The users may include a hospital 70, an individual or a family 72 and/or physicians 74. (Page 10, lines 7-10) The user 58 may, for example, request a room 76, request a bed type 78, transfer medical records 80 to the healthcare facility 52 and/or make an

appointment 81 with the healthcare facility 52. (Page 10, lines 17-23)

The database 20 may be contained on a website or other graphical interface on the computer network that may provide electronic forms for the healthcare facility 52 to enter the information 54 into the database 20 or for the users 58 to obtain the information 54 from the database 20. Further, the healthcare facility 52 or the user 58 may have a website ID number and/or a password to maintain privacy and/or to change and save information input into the database 20 or taken from the database 20. The database 20 may be accessed via a single website or via a plurality of websites that are linked to the database 20. (Page 10, lines 26-33 and page 11, lines 1-5)

VI. ISSUES

1. Would Claims 1, 2, 4-9, 14-17 and 19 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of Appellant's invention over *Ohrn* (U.S. Patent No. 6,356,874) in view of *Stanis et al.* (U.S. Patent No. 4,135,241)? See *Ohrn* (U.S. Patent No. 6,356,874) attached as Exhibit B of the Supplemental Appendix and *Stanis et al.* (U.S. Patent No. 4,135,241) attached as Exhibit C of the Supplemental Appendix.
2. Would Claims 3, 10 and 18 have been obvious under 35 U.S.C. §103(a) to one having ordinary skill in the art at the time of

Appellant's invention over *Ohrn* (U.S. Patent No. 6,356,874) in view of *Stanis et al.* (U.S. Patent No. 4,135,241) and further in view of *Bruno et al.* (U.S. Patent No. 6,289,088)? See *Bruno et al.* (U.S. Patent No. 6,289,088) attached as Exhibit D of the Supplemental Appendix.

VII. GROUPING OF CLAIMS

Appellant argues for the patentability of independent Claims 1 and 14 separately and apart from one another. Appellant argues for the patentability of dependent Claims 2-10 and 15-19 separately and apart from the independent claims from which Claims 2-10 and 15-19 depend.

VIII. ARGUMENT

The invention as defined in independent Claim 1 requires a method for providing bed availability information to a user wherein the user identifies an available bed for a patient. The bed availability information includes information on beds at a plurality of healthcare facilities wherein the plurality of healthcare facilities receives the patient based on the bed availability at one of the plurality of healthcare facilities. Claim 1 requires providing a computer network and providing a database connected to the computer network. Additionally, Claim 1 requires inputting bed availability information for a plurality of healthcare facilities wherein each of the plurality

of healthcare facilities have beds for providing a plurality of types of medical care. Further, the bed availability information is input into the database and is accessible by the computer network. Still further, Claim 1 requires providing a first access to the database for determining the available bed for the patient by the user of the database. Moreover, Claim 1 requires inputting a medical condition of the patient into the database. Claims 2-10 set forth additional steps of Appellant's method for providing bed availability information to a user.

Independent Claim 14 requires a system for storing and accessing bed availability information to a user wherein the bed availability includes information for a plurality of healthcare facilities. Each of the plurality of healthcare facilities has a plurality of beds and receives a patient if a bed is available. Additionally, Claim 14 requires a system having a computer network, a database associated with the computer network and means for inputting bed availability information of a plurality of healthcare facilities into the database. Further, Claim 14 requires means for accessing the bed availability information and retrieving the bed availability information from the database via the computer network. Moreover, Claim 14 requires means for inputting information of the patient into a form via the computer network wherein the information of the patient is stored in the database. Claims

15-19 set forth additional structural elements of Appellant's system for storing and accessing bed availability information to a user.

**A. THE CITED REFERENCES AND REJECTIONS
OF CLAIMS 1, 2, 4-9, 14-17, 19 AND 20**

Claims 1, 2, 4-9, 14-17 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Ohrn* (U.S. Patent No. 6,356,874) in view of *Stanis et al.* (U.S. Patent No. 4,135,241).

In the Final Rejection, the Examiner stated:

As per Claim 1, 14.

Ohrn ('874) discloses:

providing a network, see column 7, lines 60-66 and figure 1;

providing a database connected to the computer network, see figure 1;

inputting bed availability information for a plurality of healthcare facilities, wherein each of the plurality of healthcare facilities have beds and further wherein the bed availability information is input into the database and is accessible by the computer network, see column 6, lines 6-45, column 7, lines 60-66 and column 10, lines 22-30;

providing a first access to the database for determining the available bed for the patient by a user of the database, see column 6, lines 6-45 and column 21, lines 29-34

searching the bed availability information for the plurality of healthcare facilities in the database, see column 5, lines 37-63

determining the available bed based on user preferences, see column 5, lines 37-63.

Ohrn ('874) does not specifically disclose entering individual medical condition of a patient and searching [sic] [or] matching the bed to the condition.

Stanis et al. ('241) [sic] [teach] searching for availability of beds and the information about the bed, including data regarding the nursing station to

which it is associated, and matching, see column 3, lines 14-25 and column 21, lines 29-34 for the benefit of managing the status of beds in a hospital.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include matching patient conditions to available beds in the invention of *Ohrn* ('874) as taught by *Stanis et al.* ('241) for the benefit of accurately placing patients in the correct ward.

(See Final Rejection, pages 3 and 4 of Exhibit A of the Supplemental Appendix.)

Further, the Examiner stated:

As per Claim 2.

Ohrn ('874) further discloses providing the database on a network, see figure 1.

As per Claim 4.

Ohrn ('874) further discloses contacting one of the healthcare facilities after retrieving information about the healthcare facility, see column 10, lines 22-30 and column 5, lines 37-45.

As per Claim 5.

Ohrn ('874) further discloses providing a remote server storing the database, see figure 1.

As per Claim 6.

Ohrn ('874) further discloses providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability into the database via the second access, see column 5, lines 37-41, column 7, lines 44-50 and column 10, lines 22-30.

As per Claims 7 and 19.

Ohrn ('874) further discloses an individual healthcare facility accesses the database to input the bed availability information for the individual healthcare facility, see column 5, lines 37-41, column 7, lines 44-50 and column 10, lines 22-30.

As per Claims 8 and 15.

Ohrn ('874) does not specifically disclose bed availability includes a quantity of beds.

Stanis et al. ('241) teaches a quantity of empty beds available, see column 7, line 43 - column 8, line 8 and column 3, lines 14-25 for the benefit of accurate billing and records management.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include a quantity of beds available in the invention of *Ohrn* ('874) as taught by *Stanis et al.* ('241) for the benefit accurate billing and records management.

As per Claims 9 and 16.

Ohrn ('874) does not specifically disclose bed availability includes types of beds available.

Stanis et al. ('241) teaches a types of beds, see column 7, line 43 - column 8, line 8 and column 3, lines 14-25 for the benefit of accurate billing and records management.

Therefore, it would be have been obvious to one of ordinary skill in the art, at the time the invention was made to include a quantity of beds available in the invention of *Ohrn* ('874) as taught by *Stanis et al.* ('241) for the benefit of accurate billing and records management.

As per Claim 17.

Ohrn ('874) further discloses the bed availability information includes a projection of expected availability of beds at a facility in a specified time frame, see column 5, lines 37-63.

(See Final Rejection, pages 4-6 of Exhibit A of the Supplemental Appendix.)

B. CLAIMS 1, 2, 4-9, 14-17 AND 19 WOULD NOT HAVE BEEN OBVIOUS TO ONE HAVING ORDINARY SKILL IN THE ART AT THE TIME OF THE INVENTION IN VIEW OF *OHRN* AND FURTHER IN VIEW OF *STANIS ET AL.*, TAKEN SINGLY OR IN COMBINATION

With respect to the rejection of Claims 1, 2, 4-9, 14-17 and 19 under 35 U.S.C. §103(a) as being unpatentable over *Ohrn* in view of *Stanis et al.*, Appellant respectfully submits that the claims distinctly define the present invention from *Ohrn* and *Stanis et al.*, taken singly or in combination, for the reasons that follow.

Ohrn teaches "a method for ordering services, especially for

booking hotel rooms and travel at home and abroad as well as medical services, wherein the ordering is performed via a user terminal connected to a central data processing device." See *Ohrn*, col. 1, lines 5-9. Further, *Ohrn* teaches "the central data processing device comprises a data storage device and is also connected to a service location terminal." See *Ohrn*, col. 1, lines 9-11.

Stanis et al. merely teach inserting cards forming a plurality of card messages into a reader to transmit patient and requested service information to one or more points in the hospital. In addition, *Stanis et al.* merely teach "to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed". (See *Stanis et al.*, col. 7, lines 48-51.) Moreover, *Stanis et al.* teach "a search is made for all bed numbers in locations containing a specified nursing station number and control characters indicating a need for special attention or service." (See *Stanis et al.*, col. 21, lines 25-28.)

Claim 1 requires inputting bed availability information for a plurality of healthcare facilities wherein each of the plurality of healthcare facilities have beds for providing a plurality of types of medical care. Neither *Ohrn* nor *Stanis et*

al., taken singly or in combination, teach or suggest inputting bed availability information for a plurality of healthcare facilities, as required by Claim 1. *Ohrn* does not teach or remotely suggest inputting information for a plurality of healthcare services, as required by Claim 1. Furthermore, *Ohrn* fails to teach or remotely suggest inputting information relating to bed availability information for a plurality of healthcare facilities wherein each of the healthcare facilities have beds for providing a plurality of types of medical care, as required by Claim 1. *Stanis et al.* merely teach storing information regarding the status of beds within one hospital. Actually, *Stanis et al.* teach away from inputting bed availability information for a plurality of the healthcare facilities. *Stanis et al.* teach inserting cards into a reader to transmit information to one or more points within one hospital. The purpose of the system of *Stanis et al.* is merely to do "away with written messages and orders and insures the collection, calculation, and compilation of all charges on any desired periodic basis." See column, 2, lines 18-20. Both the purpose of the system of *Stanis et al.* and the method of use of the system of *Stanis et al.* teach away from a system and method for a plurality of healthcare facilities. Therefore, neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teach or

suggest inputting bed availability information for a plurality of healthcare facilities wherein each of the plurality of healthcare facilities have beds for providing a plurality of types of medical care, as required by Claim 1.

Moreover, the Examiner admits that *Ohrn* fails to teach or suggest inputting a medical condition of the patient into the database, as required by Claim 1. The Examiner alleges *Stanis et al.* teach entering medical information for the benefit of managing the status of beds in a hospital, citing column 21, lines 29-34. However, lines 29-34 of column 21 of *Stanis et al.* merely state "a search is made for bed numbers in storage locations containing a given set of status characters." Clearly, neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests inputting a medical condition of the patient into the database, as required by Claim 1. Therefore, Claim 1 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

In addition, Claim 1 requires searching the bed availability information for the plurality of healthcare facilities in the database. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests searching the bed availability information for a plurality of healthcare facilities, as required by Claim 1. *Stanis et al.* merely teach searching bed

availability information for one hospital. Actually, *Stanis et al.* teach away from searching the bed availability information for the plurality of healthcare facilities. *Stanis et al.* teach inserting cards into a reader to transmit information to one or more points within one hospital. The purpose of the system of *Stanis et al.* is merely to do "away with written messages and orders and insures the collection, calculation, and compilation of all charges on any desired periodic basis." See column, 2, lines 18-20. Both the purpose of the system of *Stanis et al.* and the method of use of the system of *Stanis et al.* teach away from a system and method for a plurality of healthcare facilities. Therefore, Claim 1 would not have been obvious to one of ordinary skill in the art at the time of the Appellant's invention.

Moreover, Claim 1 requires matching the medical condition of the patient in the database to one of the types of medical care to obtain the bed availability information of the plurality of healthcare facilities based on each of the plurality of healthcare facilities having beds for providing one of the types of medical care to treat the medical condition of the patient. The Examiner admits *Ohrn* fails to teach or suggest matching the medical condition of the patient in the database to one of the types of medical care to obtain bed availability information, as

required by Claim 1. The Examiner alleges it would have been obvious in view of *Stanis et al.* to include matching patient conditions to available beds for the benefit of accurately placing patients in the correct ward. On the contrary, nowhere does *Stanis et al.* teach or suggest inputting a medical condition of the user to determine the bed availability for the user with the medical condition, as required by Claim 1. *Stanis et al.* merely teach that "other sections [of the bed information storage area] are used to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed". (See *Stanis et al.*, column 7, lines 47-51). Again, *Stanis et al.* actually teach away from the invention as defined by Claim 1. Specifically, the purpose of the system of *Stanis et al.* and the method of the system of *Stanis et al.* teach away from a system and method for a plurality of healthcare facilities. Therefore, neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests matching a medical condition of the patient in the database to one of the types of medical care to obtain the bed availability information of the plurality of healthcare facilities, as required by Claim 1.

Still further, Claim 1 requires determining the available bed in the plurality of healthcare facilities for the patient

with the medical condition from the bed availability information based upon the medical condition of the patient in the database. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or remotely suggests determining an available bed based upon the medical condition of the patient in the database. Specifically, *Stanis et al.* merely teach inputting information relating to the status of beds in one hospital. Again, *Stanis et al.* teach away from a system and method with a plurality of healthcare facilities. Therefore, Claim 1 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

Claim 14 requires a means for inputting bed availability information of a plurality of healthcare facilities into the database. In addition, Claim 14 requires a means for searching the database for the bed availability information of the plurality of healthcare facilities. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests a means for inputting bed availability information of a plurality of healthcare facilities into a database, as required by Claim 14. Furthermore, neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests a means for searching the database for the bed availability information of the plurality of healthcare facilities, as required by Claim 14. *Ohrn* merely

teaches a method for ordering services, for example booking hotel rooms and travel at home and abroad as well as medical services. *Stanis et al.* merely teach searching bed availability information for one hospital. Again, *Stanis et al.* actually teach away from the invention as defined by Claim 1. Specifically, the purpose of the system of *Stanis et al.* and the method of the system of *Stanis et al.* teach away from a system and method for a plurality of healthcare facilities. Therefore, Claim 14 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

Moreover, Claim 14 requires means for inputting information of the patient into a form via the computer network wherein the information of the patient is stored in the database. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests a system having means for inputting information of the patient into a form via the computer network wherein the information of the patient is stored in the database, as required by Claim 14. *Ohrn* merely teaches that "if the orders are made within the framework of a public health system, the user terminals can be located in doctor's surgeries and the like and used by a doctor in private practice for ordering consultations with specialists, admissions to hospital and operations, etc." (See *Ohrn*, column 10, lines 25-30.) *Stanis et*

al. merely teach that "bed information search logic for compiling listings of the information stored in this area, such as lists by nursing station of beds which need attention, lists by nursing station of beds which are in a particular status (available, occupied etc.), lists of patients admitted on a particular day, and the like." (See *Stanis et al.*, column 3, lines 20-25.) Therefore, neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests a means for inputting information of the patient into a form via the computer network wherein the information of the patient is stored in the database, as required by Claim 14. Therefore, Claim 14 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

Furthermore, Claim 14 requires a means for comparing the information of the patient in the database to the bed availability information in the database to obtain each of the plurality of healthcare facilities treating the patient. The Examiner admits *Ohrn* fails to teach or suggest a means for comparing the information of the patient in the database to the bed availability information in the database to obtain each of the plurality of healthcare facilities treating the patient., as required by Claim 14. The Examiner alleges it would have been obvious in view of *Stanis et al.* to include comparing patient

conditions to available beds for the benefit of accurately placing patients in the correct ward. On the contrary, nowhere do *Stanis et al.* teach or suggest a means for comparing the information of the patient in the database to the bed availability information in the database to obtain each of the plurality of healthcare facilities treating the patient, as required by Claim 14. *Stanis et al.* merely teach that "other sections [of the bed information storage area] are used to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed". (See *Stanis et al.*, column 7, lines 47-51). Again, *Stanis et al.* actually teach away from the invention as defined by Claim 14. Specifically, the purpose of the system of *Stanis et al.* and the method of the system of *Stanis et al.* teach away from a system and method for a plurality of healthcare facilities. Therefore, Claim 14 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

Still further, Claim 14 requires a means for determining if a bed in the plurality of beds at each of the plurality of healthcare facilities for treating the patient is available based on information of the patient in the database. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches

or suggests determining if a bed in the plurality of beds at each of the plurality of healthcare facilities for treating the patient is available based on information of the patient in the database. Specifically, *Stanis et al.* merely teach inputting information relating to the status of beds in one hospital. Again, *Stanis et al.* teach away from a system and method with a plurality of healthcare facilities. Therefore, Claim 1 would not have been obvious to one of ordinary skill in the art at the time of the invention of the Appellant.

Moreover, a person of ordinary skill in the art would never have been motivated to combine *Ohrn* with *Stanis et al.* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). Appellant submits that the Patent Office is merely "piece-mealing" references together, providing various teachings and positively defined limitations of Appellant's method and system for providing bed availability information to deprecate the claimed invention. Of course, hindsight reconstruction of Appellant's invention is impermissible. Appellant respectfully submits that Claims 1 and 14 distinctly define the present invention from *Ohrn* and/or *Stanis et al.*, taken singly or in combination.

With the analysis of the deficiencies of *Ohrn* and *Stanis et al.* in mind, no reason or suggestion in the evidence of record

exists why one of ordinary skill in the art would have been led to combine *Ohrn* and *Stanis et al.* in the manner suggested by the Patent Office in formulating the rejections under 35 U.S.C. §103. Therefore, *prima facie* obviousness has not been established by the Patent Office as required under 35 U.S.C. §103.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

Appellant further submits that one having ordinary skill in the art at the time of Appellant's invention would never have been motivated to modify *Ohrn* with *Stanis et al.* in the manner suggested by the Examiner in formulating the rejections under 35 U.S.C. §103(a).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most, if not all, elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of all the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1545, 220 USPQ 193 (Fed. Cir. 1983).

Appellant submits that the Examiner has merely located components of Appellant's claimed invention. However, that the art disclosed components of Appellant's claimed invention, either separately or used in other combinations, is insufficient. A teaching, suggestion, or incentive must exist to make the combination made by Appellant. *Interconnect Planning Corp. v. Feil*, 774 F. 2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

Even assuming that one having ordinary skill in the art could somehow have combined *Ohrn* and *Stanis et al.* as set forth by the Examiner, the resultant combination still lacks the critical steps and elements positively recited in Claims 1 and 14, respectively.

In view of the foregoing, Appellant submits that the rejection of Claims 1 and 14 under 35 U.S.C. §103(a) is improper.

Dependent Claim 2 requires providing the database on the network wherein access to the database is via the network. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests providing the database on the network wherein access to the database is via the network as required by Claim 2. Contrary to the assertions of the Examiner, *Ohrn* merely teaches that "the user terminal is connected via telecommunication centre I with a linking device in a central data processing device." Moreover, *Ohrn* teaches that "the

linking device causes a connection to be established between the user terminal and a service location terminal at the service location via telecommunication network I and via telecommunication centre I." *Stanis et al.* merely teach inserting cards forming a plurality of card messages into a reader to transmit patient and requested service information to one or more points in the hospital. Therefore, the invention defined in Claim 2 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.* Accordingly, the rejection of Claim 2 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 4 requires contacting one of the healthcare facilities after retrieving information about the healthcare facility. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests contacting one of the healthcare facilities after retrieving information about the healthcare facility, as required by Claim 4. Contrary to the assertions of the Examiner, *Ohrn* merely teaches that "the user terminals can be located in doctor's surgeries and the like and used by a doctor in private practice for ordering consultations with specialists, admissions to hospital and operations, ECT." *Stanis et al.* merely teach inserting cards forming a plurality of card messages into a reader to transmit patient and requested

service information to one or more points in the hospital. Therefore, the invention defined in Claim 4 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination. Accordingly, the rejection of Claim 4 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 5 requires the step of providing a remote server and storing the database on the remote server. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests providing a remote server and storing the database on the remote server as required by Claim 5. Therefore, the invention defined in Claim 5 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.* Accordingly, the rejection of Claim 5 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper..

Dependent Claim 6 requires providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability information into the database via the second access. Nowhere do *Ohrn* and *Stanis et al.*, taken singly or in combination, teach or suggest a method having the step of providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability information into the database via

the second access as required by Claim 6. Moreover, *Ohrn* actually teaches away from a method having a step of providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability information into the database via the second access because the telemarketing system teaches that the database is automatically updated from a local data processing device at the service location. Contrary to the assertion of the Examiner, *Ohrn* merely teaches that "when the order is confirmed, the system proceeds to the next order, while the data base in the central data processing device or the telemarketing system is automatically updated from a local data processing device at the service location, thus ensuring that the data base is updated at all times with correct service information." Thus, *Ohrn* clearly teaches away from a method having a step of providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability information into the database via the second access as specifically defined in Claim 6. Therefore, the invention defined in Claim 6 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination. Accordingly, the rejection of Claim 6 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 7 requires an individual healthcare facility

access the database to input the bed availability information for the individual healthcare facility. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests an individual healthcare facility accessing the database to input the bed availability information for the individual healthcare facility, as required by Claim 7. Actually, *Ohrn* teaches away from an individual healthcare facility accessing the database to input the bed availability information for the individual healthcare facility. The telemarketing system of *Ohrn* teaches that the database is automatically updated from a local data processing device at the service location. Contrary to the assertion of the Examiner, *Ohrn* merely teaches that "when the order is confirmed, the system proceeds to the next order, while the data base in the central data processing device or the telemarketing system is automatically updated from a local data processing device at the service location, thus ensuring that the data base is updated at all times with correct service information." As a result, *Ohrn* clearly teaches away from a method wherein an individual healthcare facility accesses the database to input the bed availability information for the individual healthcare facility as specifically defined in Claim 7. Therefore, the invention defined in Claim 7 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination. Accordingly, the rejection of Claim

7 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 8 requires the bed availability information includes a quantity of empty beds available. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests the bed availability information includes a quantity of empty beds available, as required by Claim 8. The Examiner admits that *Ohrn* does not specifically disclose bed availability which includes a quantity of beds. Further, *Stanis et al.* merely teach that "the system includes bed information search logic for compiling listings of the information stored in this area, such as lists by nursing station of beds which need attention, lists by nursing station of beds which need attention, lists by nursing station of beds which are in a particular status (available, occupied, etc.), lists of patients admitted on a particular day, and the like." Moreover, *Stanis et al.* teach that "other sections are used to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed." Therefore, the invention defined in Claim 8 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination. Accordingly, the rejection of Claim 8 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 9 requires a method wherein the bed availability information includes types of empty beds available. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests the bed availability information includes types of empty beds available, as required by Claim 9. Moreover, *Stanis et al.* actually teach away from a method wherein the bed availability information includes types of empty beds available because the data handling system only teaches a system which provides bed status information. Contrary to the assertion of the Examiner, *Stanis et al.* merely teach that "other sections are used to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed." Furthermore, *Stanis et al.* teach that "a three letter code is inserted to indicate whether a bed is occupied (O.P.), clean (CAN), ready (RAY) or whatever." Thus, *Stanis et al.* clearly teach away from a method wherein the bed availability information includes types of empty beds available as specifically defined in Claim 9. Therefore, the invention defined in Claim 9 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination. Accordingly, the rejection of Claim 9 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 15 requires the bed availability information

to include a quantity of beds available. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests the bed availability information includes a quantity of beds available, as required by Claim 15. The Examiner admits that *Ohrn* does not teach or suggest bed availability including a quantity of beds. Further, *Stanis et al.* merely teach that "the system includes bed information search logic for compiling listings of the information stored in this area, such as lists by nursing station of beds which need attention, lists by nursing station of beds which need attention, lists by nursing station of beds which are in a particular status (available, occupied, etc.), lists of patients admitted on a particular day, and the like." Moreover, *Stanis et al.* teach that "other sections are used to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed." Therefore, the invention defined in Claim 15 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination. Accordingly, the rejection of Claim 15 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 16 requires the bed availability information to include types of beds available. Neither *Ohrn* nor *Stanis et al.*, taken singly or in combination, teaches or suggests a

system wherein the bed availability information includes types of beds available, as required by Claim 16. The Examiner admits *Ohrn* does not teach or suggest bed availability which includes types of beds available. Therefore, the invention defined in Claim 16 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination.

Moreover, *Stanis et al.* actually teach away from a system wherein the bed availability information includes types of empty beds available. *Stanis et al.* merely teach a system providing bed status information. Contrary to the assertion of the Examiner, *Stanis et al.* merely teach that "other sections are used to store temporary information pertaining to the status of the bed (clean, ready, occupied, etc.) and information as to who is the current occupant of the bed." Furthermore, *Stanis et al.* teach that "a three letter code is inserted to indicate whether a bed is occupied (O.P.), clean (CAN), ready (RAY) or whatever." Thus, *Stanis et al.* clearly teach away from a system wherein the bed availability information includes types of empty beds available as specifically defined in Claim 16. Accordingly, the rejection of Claim 16 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 17 requires the bed availability information to include a projection of expected availability of beds at a facility in a specified time frame. Neither *Ohrn* nor *Stanis et*

al., taken singly or in combination, teaches or suggests a system wherein the bed availability information includes a projection of expected availability of beds at a facility in a specified time frame, as required by Claim 17. *Ohrn* actually teaches away from a system wherein the bed availability information includes a projection of expected availability of beds at a facility in a specified time frame because the telemarketing system of *Ohrn* merely teaches that the service offers having vacant rooms will read out. Contrary to the assertion of the Examiner, *Ohrn* merely teaches that "after the specification criteria have been read out, i.e. the customer has established place, date and price class, the voice network interface will now read out the relevant service offers, i.e. those hotels which have vacant rooms." Thus, *Ohrn* clearly teaches away from the bed availability information includes a projection of expected availability of beds at a facility in a specified time frame, as required by Claim 17. Therefore, the invention defined in Claim 17 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination. Accordingly, the rejection of Claim 17 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

Dependent Claim 19 requires a means for accessing the database wherein an individual healthcare facility enters the bed availability into the database. Neither *Ohrn* nor *Stanis et*

al., taken singly or in combination, teaches or suggests a means for accessing the database wherein an individual healthcare facility enters the bed availability into the database, as required by Claim 19. Therefore, the invention defined in Claim 19 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn* and *Stanis et al.*, taken singly or in combination.

Moreover, *Ohrn* actually teaches away from a system having a means for accessing the database wherein an individual healthcare facility enters the bed availability into the database. *Ohrn* merely teaches that the database is automatically updated from a local data processing device at the service location. Contrary to the assertion of the Examiner, *Ohrn* merely teaches that "when the order is confirmed, the system proceeds to the next order, while the data base in the central data processing device or the telemarketing system is automatically updated from a local data processing device at the service location, thus ensuring that the data base is updated at all times with correct service information." Therefore, *Ohrn* clearly teaches away from a system having a means for accessing the database wherein an individual healthcare facility enters the bed availability into the database as specifically defined in Claim 19. Accordingly, the rejection of Claim 19 under 35 U.S.C. §103(a) in view of *Ohrn* and *Stanis et al.* is improper.

The Examiner also alleges Claims 14-17 merely recite the

manner in which the apparatus is intended to be employed and do not differentiate the claimed apparatus from the prior art. Appellant submits the Examiner has disregarded the claimed invention as a whole. Furthermore, the Examiner has attempted to distill Appellant's claimed invention directed to a system and method for providing bed availability on a computer network to merely a network with a database and input means. Moreover, the Examiner has failed to interpret the claim language in its broadest reasonable interpretation consistent with the specification and to read the claims in light of the specification. *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

The Examiner cites *Ex parte Masham*, 2 USPQ 2d 1657 (Bd. Pat. App. & Inter. 1987), as holding that a recitation of the manner in which the apparatus is intended to be used does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitation of the claim. However, the Board determined "the apparatus disclosed by Williams does not undergo a metamorphosis to a new apparatus merely by affixing instructions thereto indicating that a sufficient amount of developer material may be poured into the apparatus to completely submerge the stationary mixing means" *Id.* As a result, the Board held "the recitation 'completely submerged in the developer material' does not impose any structural limitations upon the claimed apparatus which

differentiates it from that disclosed by Williams." *Id.*

Appellant submits that the system and method disclosed in the combination of *Ohrn* and *Stanis et al.* does not teach or remotely suggest the structural limitations of Claims 14-17 and 19.

With respect to Claim 14, Appellant submits inputting bed availability information, accessing the bed availability information and inputting information of the patient into a form are necessary for storing and accessing bed availability information on the database for a plurality of healthcare facilities. The bed availability information and information of the patient on the database structurally limits Claim 14. As mentioned above, the information on the database and accessing, inputting, searching and comparing information in the database for a plurality of healthcare facilities structurally differentiate the claimed system of Claim 14 over *Ohrn* in view of *Stanis et al.*, taken singly or in combination.

Similarly, Claims 15-19 depend from independent Claim 14 and further define the system of Claim 14. As a result, Claims 15-19 structurally define the claimed system and differentiate the claimed system from the system of *Ohrn* in view of *Stanis et al.*, taken singly or in combination.

Moreover, in overruling the rejection of the claims of *In re Gulack* by the Patent and Trademark Office Board of Appeals, the *In re Gulack* court stated "differences between an invention

and the prior art cited against it cannot be ignored merely because the differences reside in the content of the printed matter." See 703 F.2d 1383, 1385 (Fed. Cir. 1983). More specifically, "under section 103, the board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable; [t]he claim must read the claim as a whole." *Id.*

The content of Appellant's system for storing and accessing bed availability information for a plurality of healthcare facilities cannot be ignored because some of the differences between Appellant's system relate to the content of information. The structural differences between the invention in *In re Gulack* and the prior art were merely the particular sequence of digits on a band or ring. However, the structural differences between Appellant's invention as defined in Claims 14-19 and *Ohrn* and *Stanis et al.*, taken singly or in combination, are more significant than the mere sequence of digits in *In re Gulack*.

In view of the foregoing, the rejection of Claims 1, 2, 4-9, 11-17, 19 and 20 under 35 U.S.C. §103(a) is improper.

**C. THE CITED REFERENCES AND REJECTION
OF CLAIMS 3, 10 and 18**

Claims 3, 10 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Ohrn* (U.S. Patent No. 6,356,874) in view of *Stanis et al.* (U.S. Patent No. 4,135,241) and further in view of *Bruno et al.* (U.S. Patent No. 6,289,088).

In the Final Rejection, the Examiner stated:

As per Claim 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al. ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the internet as a less expensive alternate network as taught by *Bruno et al.* ('088) in the invention of *Ohrn* ('874).

As per Claim 10.

Ohrn ('874) further discloses an online form for accessing the database and inputting information, see figure 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al. ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention was made to use the internet as a less expensive alternative network as taught by *Bruno et al.* ('088) in the invention of *Ohrn* ('874).

As per Claim 18.

Ohrn ('874) further discloses an online form for accessing the database and inputting information, see figure 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al. ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the

internet as a less expensive alternate network as taught by *Bruno et al.* ('088) in the invention of *Ohrn* ('874).

(See Final Rejection, page 5 of Exhibit A of the Supplemental Appendix.)

**D. *OHRN, STANIS ET AL., OR BRUNO ET AL.,*
TAKEN SINGLY OR IN COMBINATION, DO NOT TEACH OR SUGGEST THE
INVENTION DEFINED IN CLAIMS 3, 10 AND 18, AND IT WOULD
NOT HAVE BEEN OBVIOUS TO COMBINE THEM BY ONE OF ORDINARY SKILL
IN THE ART AT THE TIME OF THE INVENTION**

Claims 3, 10 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Ohrn* in view of *Stanis et al.* and further in view of *Bruno et al.* Appellant respectfully submits that Claims 3, 10 and 18 distinctly define the present invention from *Ohrn, Stanis et al.* or *Bruno et al.*, taken singly or in combination, for the reasons that follow.

Dependent Claim 3 requires the network to be the internet. Dependent Claim 10 requires providing an internet-enabled form on a website for accessing the remote database and inputting information into the database.

With respect to the assertion of the Examiner that use of the internet as a less expensive alternative network is obvious, Appellant submits that the evidence of record fails to support the assertion. Additionally, the Examiner admits that *Ohrn* does not specifically disclose that the network is the internet. Further, Appellant asserts that *Bruno et al.* fail to illustrate that the internet is a well known network. Furthermore, Appellant submits that the assertion is an improper basis for

formulating a rejection under 35 U.S.C. §103.

Bruno et al. fail to teach or suggest a method for providing bed availability information to a user wherein the network is the internet as required by Claim 3. Furthermore, *Bruno et al.* fail to teach or suggest a method for providing bed availability information to a user by providing an internet-enabled form on a website for accessing the remote database and inputting information into the database as required by Claim 10.

Moreover, none of *Ohrn, Stanis et al.*, or *Bruno et al.*, taken singly or in combination, teach the elements of Claims 3 or 10. More specifically, none of *Ohrn, Stanis et al.*, or *Bruno et al.*, taken singly or in combination, teach or suggest providing a computer network wherein the network is the internet and inputting a medical condition of the user to determine the bed availability for the user with the medical condition as required by Claim 3. Furthermore, none of *Ohrn, Stanis et al.*, or *Bruno et al.*, taken singly or in combination, teach or suggest inputting a medical condition of the user to determine the bed availability for the user with the medical condition, providing an internet-enabled form on a website for accessing the remote database and inputting information into the database as required by Claim 10. Therefore, Claims 3 and 10 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn, Stanis et al.*, or *Bruno et al.*, taken singly or in combination.

Dependent Claim 18 requires a remote server wherein the database is contained on the remote server and a website providing access to the database. *Bruno et al.* fail to teach or suggest a system for storing and accessing bed availability information to a user having a remote server wherein the database is contained on the remote server and a website which provides access to the database as required by Claim 18. Moreover, none of *Ohrn, Stanis et al.*, or *Bruno et al.*, taken singly or in combination, teach or suggest a remote server wherein the database is contained on the remote server and website providing access to the database as required by Claim 18. Therefore, Claim 18 would not have been obvious to one of ordinary skill in the art at the time of Appellant's invention in view of *Ohrn, Stanis et al.*, or *Bruno et al.*, taken singly or in combination.

Appellant submits that the Examiner has merely located components of Appellant's claimed invention. However, that the art disclosed components of Appellant's claimed invention, either separately or used in other combinations, is insufficient. A teaching, suggestion, or incentive must exist to make the combination made by Appellant. *Interconnect Planning Corp. v. Feil*, 774 F. 2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988). No such teaching, suggestion or incentive exists in *Ohrn, Stanis et al.* or *Bruno et al.* to provide the features set forth in Appellant's invention. Therefore, one of

ordinary skill in the art would not have been motivated at the time of Appellant's invention to combine *Ohrn, Stanis et al.* and *Bruno et al.*

Still further, Appellant submits that the Examiner is merely "piece-mealing" references together providing various teachings and positively defined steps and novel elements of Appellant's method and system, respectively, to deprecate the claimed invention. Of course, hindsight reconstruction of Appellant's invention is impermissible. Since no suggestion exists to combine *Ohrn, Stanis et al.* and *Bruno et al.*, the Examiner cannot arbitrarily do so to reject the claims. Instead, a reason is required why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975).

With the analysis of the deficiencies of *Ohrn, Stanis et al.* and *Bruno et al.* in mind, no reason or suggestion in the evidence of record exists why one of ordinary skill in the art would have been led to combine *Ohrn, Stanis et al.* and *Bruno et al.* in the manner suggested by the Patent Office in formulating the rejections under 35 U.S.C. §103. Therefore, *prima facie* obviousness has not been established by the Patent Office as required under 35 U.S.C. §103.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. *In re Simon*,

461 F. 2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most, if not all, elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1545, 220 USPQ 193 (Fed. Cir. 1983).

In considering obviousness, the critical inquiry is whether something in the art as a whole suggests the desirability, and thus the obviousness, of making a combination. *In re Newell*, 891 F.2d 899, 901-02, 13 USPQ 2d 1248, 1250 (Fed. Cir. 1987).


Since the Examiner has failed to establish a *prima facie* case of obviousness in combining *Ohrn, Stanis et al.* and *Bruno et al.*, the rejection of Claims 3, 10 and 18 under 35 U.S.C. §103(a) is improper.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the rejections of Claims 1-10 and 14-19 are erroneous as a matter of law and fact and respectfully requests the Board to

reverse the rejections.

Respectfully submitted,



(Reg. No. 35,018)

Brian M. Mattson
Patents+TMS
A Professional Corporation
1914 North Milwaukee Ave.
Chicago, IL 60647
(773) 772-6009
ATTORNEY FOR APPELLANT

IX. TABLE OF CONTENTS

- 1) APPENDIX: Claims 1-10 and 14-19
- 2) SUPPLEMENTAL APPENDIX

EXHIBIT A: Final Rejection

EXHIBIT B: *Ohrn* (U.S. Patent No. 6,356,874)

EXHIBIT C: *Stanis et al.* (U.S. Patent No. 4,135,241)

EXHIBIT D: *Bruno et al.* (U.S. Patent No. 6,289,088)

APPENDIX

1. A method for providing bed availability information to a user wherein the user identifies an available bed for a patient and further wherein the bed availability information includes information on beds at a plurality of healthcare facilities wherein the plurality of healthcare facilities receives the patient based on the bed availability at one of the plurality of healthcare facilities, the method comprising the steps of:

providing a computer network;

providing a database connected to the computer network;

inputting bed availability information for a plurality of healthcare facilities wherein each of the plurality of healthcare facilities have beds for providing a plurality of types of medical care and further wherein the bed availability information is input into the database and is accessible by the computer network;

providing a first access to the database for determining the available bed for the patient by the user of the database;

inputting a medical condition of the patient into the database;

searching the bed availability information for the plurality of healthcare facilities in the database;

matching the medical condition of the patient in the database to one of the types of medical care to obtain the bed

availability information of the plurality of healthcare facilities based on each of the plurality of healthcare facilities having beds for providing one of the types of medical care to treat the medical condition of the patient; and

determining the available bed in the plurality of healthcare facilities for the patient with the medical condition from the bed availability information based upon the medical condition of the patient in the database.

2. The method of Claim 1 further comprising the step of:

providing the database on the network wherein access to the database is via the network.

3. The method of Claim 1 wherein the network is the internet.

4. The method of Claim 1 further comprising the step of:

contacting one of the healthcare facilities after retrieving information about the healthcare facility.

5. The method of Claim 1 further comprising the steps of:

providing a remote server; and

storing the database on the remote server.

6. The method of Claim 1 further comprising the step of:

providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability information into the database via the second access.

7. The method of Claim 1 wherein an individual healthcare

facility accesses the database to input the bed availability information for the individual healthcare facility.

8. The method of Claim 1 wherein the bed availability information includes a quantity of empty beds available.

9. The method of Claim 1 wherein the bed availability information includes types of empty beds available.

10. The method of Claim 1 further comprising the step of:

providing an internet-enabled form on a website for accessing the remote database and inputting information into the database.

14. A system for storing and accessing bed availability information to a user wherein the bed availability information includes information for a plurality of healthcare facilities wherein each of the plurality of healthcare facilities has a plurality of beds and receives a patient if a bed is available, the system comprising:

a computer network;

a database associated with the computer network;

means for inputting bed availability information of a plurality of healthcare facilities into the database;

means for accessing the bed availability information and retrieving the bed availability information from the database via the computer network;

means for inputting information of the patient into a form

via the computer network wherein the information of the patient is stored in the database;

means for searching the database for the bed availability information of the plurality of healthcare facilities;

means for comparing the information of the patient in the database to the bed availability information in the database to obtain each of the plurality of healthcare facilities for treating the patient; and

means for determining if a bed in the plurality of beds at each of the plurality of healthcare facilities for treating the patient is available based on the information of the patient in the database.

15. The system of Claim 14 wherein the bed availability information includes a quantity of beds available.

16. The system of Claim 14 wherein the bed availability information includes types of beds available.

17. The system of Claim 14 wherein the bed availability information includes a projection of expected availability of beds at a facility in a specified time frame.

18. The system of Claim 14 further comprising:

a remote server wherein the database is contained on the remote server; and

a website providing access to the database.

19. The system of Claim 14 further comprising:

means for accessing the database wherein an individual healthcare facility enters the bed availability into the database.

Office Action Summary

Application No.

09/544,508

Applicant(s)

WYATT, PHIL

Examiner

Thomas A. Dixon

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. Reconsideration was made of the Stanis et al reference after the interview and it is seen to disclose the matching feature claimed, see column 21, lines 29-34. Further, claim 14 does not include the same level of detail as claim 1 regarding medical condition of the patient, but merely patient data.

2. Claims Directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959).

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (bd Pat. App. & Inter. 1987). Thus the structural limitations of claim 14-19, including a network, a database, an input means, means for searching, comparing, matching and retrieving are disclosed in Ohn in view of Stennis et al as described herein. Also as described the limitations of the claim do not distinguish the claimed apparatus from the prior art.

3 Applicant's arguments regarding the existence of different wards in hospitals and placement of patients in different wards based on their medical needs is not persuasive, the method has traditionally been called triage. Further, Stannis discloses bed data that includes the nursing station, which indicate different wards, and searches and comparisons by the admitting office for beds with given characteristics, see column 21, lines 29-34.

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4. Applicant's arguments regarding the status of the internet and websites as being old and well known at the time of applicant's invention are not convincing. The internet was old and well known by the April 2000 filing date, regardless, Bruno discloses the internet, see column 5, lines 34-56.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 4-9, 14-17, 19 are rejected under 35 U.S.C. 103(a) as being anticipated by Ohrn (6,356,874) in view of Stanis et al ('4,135,241).

As per Claim 1, 14.

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Ohrn ('874) discloses:

providing a network, see column 7, lines 60-66 and figure 1;

providing a database connected to the computer network, see figure 1;

inputting bed availability information for a plurality of healthcare facilities, wherein each of the plurality of healthcare facilities have beds for providing a plurality of types of medical care and further wherein the bed availability information is input into the database and is accessible by the computer network, see column 6, lines 6-45, column 7, lines 60-66 and column 10, lines 22-30;

providing a first access to the database for determining the available bed for the patient by a user of the database, see column 6, lines 6-45 and column 21, lines 29-34, searching the bed availability information for the plurality of healthcare facilities in the database, see column 5, lines 37-63;

determining the available bed based on user preferences, see column 5 lines 37-63.

Ohrn ('874) does not specifically disclose entering individual medical condition of a patient and searching, matching the bed to the condition.

Stanis et al ('241) teaches searching for availability of beds, including reserving beds, and the information about the bed, including data regarding the nursing station to which it is associated, and matching, see column 3, lines 14-25 and column 21, lines 29-34 for the benefit of managing the status of beds in a hospital.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include matching patient conditions to available beds in the invention of Ohrn ('874) as taught by Stanis et al ('241) for the benefit of accurately placing patients in the correct ward.

As per Claim 11.

Ohrn ('874) further discloses searching the database for the bed availability information, see column 5, lines 37-63;

matching healthcare facility criteria with patient needs, see column 5, lines 37-41 and column 10, lines 22-30.

As per Claim 12.

Ohrn ('874) further discloses searching a database based on user entered criteria for the bed availability information, see column 5, lines 37-63.

Ohrn ('874) does not specifically disclose entering individual medical condition of a patient.

Stanis et al ('241) teaches entering medical information, see column 3, lines 14-25 and column 4, lines 23-36 for the benefit of managing the status of beds in a hospital.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include a quantity of beds available in the invention of Ohrn ('874) as taught by Stanis et al ('241) for the benefit of managing the status of beds in a hospital.

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As per Claim 13, 20.

Ohrn ('874) further discloses a means for searching, see column 5, 37-63.

As per Claim 2.

Ohrn ('874) further discloses providing the database on a network, see figure 1.

As per Claim 4.

Ohrn ('874) further discloses contacting one of the healthcare facilities after retrieving information about the healthcare facility, see column 10, lines 22-30 and column 5, lines 37-45.

As per Claim 5.

Ohrn ('874) further discloses providing a remote server storing the database, see figure 1.

As per Claim 6.

Ohrn ('874) further discloses providing a second access to the database wherein an extended care or a healthcare facility having beds enters the bed availability into the database via the second access, see column 5, lines 37-41, column 7, lines 44-50 and column 10, lines 22-30.

As per Claim 7, 19.

Ohrn ('874) further discloses an individual healthcare facility accesses the database to input the bed availability information for the individual healthcare facility, see column 5, lines 37-41, column 7, lines 44-50 and column 10, lines 22-30.

As per Claim 8, 15.

Ohrn ('874) does not specifically disclose bed availability includes a quantity of beds.

Stanis et al ('241) teaches a quantity of empty beds available, see column 7, line 43 – column 8, line 8 and column 3, lines 14-25 for the benefit of managing the status of beds in a hospital.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include a quantity of beds available in the invention of Ohrn ('874) as taught by Stanis et al ('241) for the benefit of managing the status of beds in a hospital.

As per Claim 9, 16.

Ohrn ('874) does not specifically disclose bed availability includes types of beds available.

Stanis et al ('241) teaches a types of beds, see column 7, line 43 – column 8, line 8 and column 3, lines 14-25 for the benefit of managing the status of beds in a hospital.

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Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include a quantity of beds available in the invention of Ohrn ('874) as taught by Stanis et al ('241) for the benefit of managing the status of beds in a hospital.

As per Claim 17.

Ohrn ('874) further discloses the bed availability information includes a projection of expected availability of beds at a facility in a specified time frame, see column 5, lines 37-63.

7. Claims 3, 10, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohrn (6,356,874) in view of Stanis et al ('241) further in view of Bruno et al (6,289,088).

As per Claim 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the internet as a less expensive alternate network as taught by Bruno et al ('088) in the invention of Ohrn ('874).

As per Claim 10.

Ohrn ('874) further discloses an online form for accessing the database and inputting information, see figure 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the internet as a less expensive alternate network as taught by Bruno et al ('088) in the invention of Ohrn ('874).

As per Claim 18.

Ohrn ('874) further discloses an online form for accessing the database and inputting information, see figure 3.

Ohrn ('874) does not specifically disclose the network is the internet.

Bruno et al ('088) teaches use of the internet as a less expensive alternative to long distance service, see column 5, lines 34-56.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the internet as a less expensive alternate network as taught by Bruno et al ('088) in the invention of Ohrn ('874).

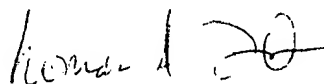
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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas A. Dixon
Primary Examiner
Art Unit 3629

July 04